In the Supreme Court of the United States

OCTOBER TERM, 1958.

No. ~~361~~ 82

COMMUNICATION WORKERS OF AMERICA, AFL-CIO,
Petitioner,

vs.

THE OHIO BELL TELEPHONE COMPANY,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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In the Supreme Court of the United States

OCTOBER TERM, 1958.

No. 961.

COMMUNICATION WORKERS OF AMERICA, AFL-CIO,
Petitioner,

vs.

THE OHIO BELL TELEPHONE COMPANY,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

(A) QUESTION PRESENTED FOR REVIEW.

Does the District Court have jurisdiction under Sec. 301(a) of the Labor Management Relations Act over a suit alleging the violation of a collective bargaining agreement, the existence of which is denied, where only rights uniquely personal to the employees are involved?

(B) STATEMENT OF THE CASE.

Petitioner, Communication Workers of America, A.F.L.-C.I.O., the Union, an unincorporated association, is the bargaining representative of the Respondent's represented employees. Respondent, The Ohio Bell Telephone Company, is an Ohio public utility furnishing telephone service.

On July 2, 1957 the Union notified the Company that it desired to negotiate modifications of an existing wage and working conditions agreement, dated September 13, 1956, the primary term of which was from September 9, 1956 to and including September 7, 1957 and which provided it would remain in effect thereafter unless terminated by 60 days' notice (147a). Neither party gave notice of termination (83a).

Bargaining commenced on July 31, 1957. On September 5, 1957, the Federal Mediation and Conciliation Service entered into the matter and Commissioner Robertson thereafter took an active part as conciliator (26a, 52a). A strike was declared on September 16, 1957 (1b, 2b).

Bargaining continued during the strike. Both parties recognized the need for a strike settlement or back-to-work agreement to go into effect at such time as agreement might be reached on modification of the existing wage and working conditions agreement (7b-8b, 19b, 39b). The Union claims that on the evening of September 30, 1957 it instructed Commissioner Robertson to inform the Company that the Union accepted the Company's proposals on wages and working conditions and that Commissioner Robertson did so (18a, 19a). The Company claims the evidence shows that the Commissioner never communicated any acceptance (24b, 50b). The Commissioner in his testimony said that he told the Company that Hughes, chairman of the Union's bargaining committee, wanted to see the Company's proposed back-to-work agreement so that he might study it overnight (8b-10b). A draft was handed to the Commissioner in accordance with that request (49b-50b). He gave it to Hughes (42a).

This draft of the back-to-work agreement provided that there would be no discrimination against any worker

for having gone on strike or for having refrained from striking. It also contained provisions adjusting the net credited service of the employees by the number of days of unauthorized absence while on strike. That adjustment was limited in its application to the Company's non-contributory pension fund, vacation allowances, termination allowances, sickness and death benefits, and the wage progression schedules.[1] The Union objected to these provisions adjusting net credited service (24b, 25b).

The parties continued joint bargaining sessions on October 1, 1957 and thereafter until October 22, 1957. On October 3, 1957 the Union ordered the employees to return to work (178a).

On November 12, 1957 the Union instituted this suit in The United States District Court for the Northern District of Ohio, Eastern Division. The Complaint claims that the Union reached agreement with the Company on a wage and working conditions contract on September 30, 1957 and that the Company refused to make such contract effective. Specific performance is sought, including payment of increased wages at the rate of $3,100,000.00 annually (3a-6a).

The Company's answer denies that any agreement was reached, challenges the jurisdiction of the Court over the subject matter and pleads the Statute of Frauds (6a-11a).

The District Court, Judge Paul C. Weick, overruled an application for a preliminary injunction.

Inasmuch as the then existing wage and working conditions agreement, dated September 13, 1956, had never

[1] On the following day, October 1, the Company, in effect, eliminated the wage progression schedule as one of the subjects of adjustment (162a-164a). "Wage progression schedule" refers to bargained automatic increases at agreed on intervals without regard to merit.

been terminated, the Company continued to abide by that agreement until it was replaced by a written agreement of December 19, 1957 entered into during trial of the suit. This agreement was presented to and received by the District Court and ordered by the Court to be made part of the record (2a, 51b).

This agreement contained a provision that there would be no discrimination against any employee because of striking or failing to strike (p. 11, Appendix to Petition). It also provided, in substance, that the wages and working conditions identical with the offer of the Company, which the Union claimed it had accepted on September 30, 1957, be incorporated in an executed contract effective December 1, 1957 and thereafter for 15 months (p. 11, Appendix to Petition).

It provided, as did the offer which the Union claims it accepted on September 30, 1957, that the parties would:

> "Continue all present provisions of the Contract between the Communication Workers of America and The Ohio Bell Telephone Company, dated September 13, 1956, except as follows: * * *" (p. 11, Appendix to Petition, 52b).

The exceptions related only to the calculation of sickness benefits, scheduling and transfer procedures and new wage scales (52b-62b). The exceptions were the only modification of the then existing agreement dated September 13, 1956.

The December 19 agreement also contained a provision that the final judgment, after all appeals, should control as to whether the net credited service of the employees should be adjusted with respect to pension rights, vacation allowances, termination allowances, and sickness and death benefits for the period of time they were absent without authorization during the strike. It provided that

if the Union should lose this case, on any ground whatever, or if the Union should dismiss its case, then the provision for the adjustment of net credited service was to become part of the wage and working conditions contract. It provided that, if the final judgment should uphold the Union in all respects and final judgment be entered enforcing the alleged contract, then the provision for the adjustment of net credited service was never to become effective and the 15 month contract was to be identical with that made effective as of December 1, except that it was to be effective as of September 30, and for 15 months thereafter.

The Company was authorized during the pendency of this case to administer the adjustment of net credited service as if it were already in effect. This was because should the Company lose the case, it could pay such additional sums as would then be due the employees whose net credited service had been treated as having been adjusted. If the right to administer the adjustment had been deferred until final determination in the Company's favor, it would be practically impossible for the Company to recover the money equal to the adjustments which should have been made, since the Company could not hold the Union responsible for the money paid to the employees (pp. II-V, Appendix to Petition).

The Union agreed that it would not contest the validity of the adjustment directly or indirectly before any court or administrative body (p. III, Appendix to Petition, 179a).

The validity of adjusting the net credited service has not been in issue at any time in this case. The Union has sued to enforce an alleged contract with the Company which the Union claims contained no back-to-work or strike termination provisions. The Company claims that the offer which it made included the wage and working

conditions proposal, which the Union in its Petition said it accepted, that said offer included the proposed back-to-work agreement, and that it was conditioned upon agreement being reached upon the terms on which the strike would be terminated. The dispute is simply one as to whether the parties had entered into a contract.

The Union assured the District Court that bad faith bargaining is not claimed. The District Court found in its Opinion (182a):

> "There was no question of bad faith of either of the parties."

(C) REASONS WHY THE WRIT SHOULD BE DENIED.

The Union seeks specific performance of the agreement claimed to have been reached on September 30, 1957 effecting modifications in the then existing wage and working conditions agreement effective September 9, 1956. The only modifications claimed to have been agreed to concerned sickness benefits, scheduling and transfer procedures and new wage scales. These four modifications involved benefits uniquely personal to the individual employees. The Union also seeks a money judgment on behalf of the individual employees in the amount of wages due in the past under the claimed modified wage scales.

The Union urges that the Federal Court has jurisdiction over such a controversy by virtue of Section 301(a) of the Labor Management Relations Act.

This Court has decided that jurisdiction is not conferred by Section 301(a) over a suit of this nature where rights uniquely personal to the individual employees are claimed to have been violated.

The reasoning of the Courts below is consistent with the holdings of this Court. There is no unsettled question of federal law here involved. This is not a case of con-

flict between Circuit Courts of Appeals. Nor is certiorari suggested by any of the other standards formulated by this Court in its Rules relating to writs of certiorari.

I. THIS CASE PRESENTS NO UNSETTLED QUESTION OF FEDERAL LAW.

(i) The Westinghouse decision held Section 301 confers no jurisdiction where the suit involves rights and benefits uniquely personal to employees.

In *Association of Westinghouse Salaried Employees vs. Westinghouse Electrical Corp.*, 348 U. S. 437 (1955), this Court determined that Section 301 was not intended by Congress to confer jurisdiction upon the Federal Courts over suits brought by unions in their representative capacity, that is to say, suits involving violations of rights and benefits uniquely personal to the employees. The union had alleged violation of rights under a collective bargaining agreement. The issue was whether the employees were entitled to wages during a given period. The majority opinion, by Mr. Justice Frankfurter, stated at page 460:

> "With due regard to the constitutional difficulties which would be raised, and in view of the fact that such an interpretation would bring to the federal courts an extensive range of litigation heretofore entertained by the States, we conclude that Congress did not will this result. There was no suggestion that Congress, at a time when its attention was directed to congestion in the federal courts, particularly in the heavy industrial areas, intended to open the doors of the federal courts to a potential flood of grievances based upon an employer's failure to comply with terms of a collective agreement relating to compensation, terms peculiar in the individual benefit which is their subject matter and which, when violated, give a cause of action to the individual employee. The em-

ployees have always been able to enforce their individual rights in the state courts. They have not been hampered by the rules governing unincorporated associations. To this extent, the collective bargaining contract has always been 'enforceable.'

"Nowhere in the legislative history did Congress discuss or show any recognition of the type of suit involved here, in which the union is suing on behalf of employees for accrued wages. Therefore, we conclude that Congress did not confer on the federal courts, jurisdiction over a suit such as this one."

The concurring opinion of Mr. Chief Justice Warren, in which Mr. Justice Clark joined, states at page 461:

"For us the language of Sec. 301 is not sufficiently explicit nor its legislative history sufficiently clear to indicate that Congress intended to authorize a union to enforce in a federal court the uniquely personal right of an employee for whom it had bargained to receive compensation for services rendered his employer."

(ii) The dismissal by District Court was based on the Westinghouse decision.

After full hearing on the merits, the District Court dismissed this case for want of jurisdiction, specifically basing his decision upon *Westinghouse*.

Judge Weick said in his opinion:

"The Supreme Court, in *Association of Westinghouse Salaried Employees vs. Westinghouse Electric Corp.*, 348 US 437 (1955), held that Section 301(b) of the Labor Management Relations Act did not confer jurisdiction on the district court to interpret collective bargaining contracts, declare the rights of the parties, compel the employer to make an accounting and enter a judgment in favor of the individual employees, who were not parties to the suit for unpaid

wages. These rights were deemed to be uniquely personal to the employees and enforceable by them in the state courts. In other words, title to the cause of action for wages was in the individual employees and not the Union." (180a).

He also said in his opinion:

> "*Westinghouse* is plain authority for the proposition that the Union may not maintain an action in the District Court to collect wages due to employees. The Union, in asking for specific performance of the agreement instead of individual judgments in favor of the employees did not change the substance of the action. The result was the same." (182a).

The Union should have no difficulty (p. 7, Petition) in comprehending Judge Weick's statement that:

> "The agreement of September 9, 1956 and the alleged oral agreement of September 30, 1957 were mutually exclusive. The Company ought not to be held in violation of the latter when it was required to and did perform the former until the new agreement of December 19th went into effect." (183a).

Judge Weick was showing that the suit could not conceivably involve the violation of any rights of the Union as such.

The collectively bargained contract of September 9, 1956 was in existence when the 1957 bargaining commenced and remained in existence thereafter until (1) September 30, 1957 when the Union claimed a contract was made or until (2) December 19, 1957 when it was replaced during trial by an agreement effective retroactively to December 1, 1957. All rights belonging to the Union as a union, contained in the September 9, 1956 contract, continued without any change or modification in the claimed contract of September 30, 1957 or the acknowledged contract of December 19, 1957. Thus, irrespective of which

contract was in effect when the instant case was filed there was no violation of any rights belonging to the Union as a union.

(iii) District Court's statement at oral hearing that it had jurisdiction on Motion for Preliminary Injunction irrelevant.

The Union calls attention to the fact that when the case was heard upon the application for a preliminary injunction, the District Court stated his belief that he had jurisdiction. This is wholly irrelevant. No matter what the Court thought at some earlier point in the case, the important thing is his judgment at its completion. The Union cannot seriously argue that the District Court or this Court is bound by the District Court's first views as to its jurisdiction.

Nor would the fact that the District Court's final decision might differ from its earlier view be reason for granting certiorari.

At the conclusion of the argument upon the motion for a preliminary injunction, counsel for the Company stated that the jurisdiction point would not be argued at that time in light of the view expressed by the Court, but that, if the Court would permit, the jurisdiction question would be argued when the case was finally submitted.

The Union knew that the jurisdiction question was open because Judge Weick, at the conclusion of all the evidence, stated:

> "On the jurisdiction question I indicated for the purpose of that motion I'd be satisfied as to that, but I didn't mean on the matter of the merits." (52b)

The jurisdiction question was argued in both the Company's brief and the Union's brief before the District Court.

(iv) The reasoning of Westinghouse applies to the recovery sought in the instant suit.

Jurisdiction does not exist, says *Westinghouse*, when the case is for the violation of a right uniquely personal to the individual employees. *Westinghouse* further held that the right to wages belongs to the individual employees. Wages is the principal subject of relief sought in the case at bar.

It is clear that the other contractual obligations, whose violation is alleged, relating to sickness benefits and provisions for scheduling and transfers, are owned by and are just as uniquely personal to the individual employees as are wages. The sickness benefits are cash payments agreed to be made as part of the compensation for work performed. Labor is compensated by wages and other rewards agreed on. Employees own the right to compel the employer to fulfill the terms under which they agree to work. Certainly the scheduling of shifts and tours or the right to work in or be transferred to a given work location are part of the terms under which employees work. Both the right to demand the terms agreed upon and the right to demand wages and other cash payments agreed upon logically belong to the same person, the person who labors in return therefor.

Thus, the *Westinghouse* decision is applicable and controlling even though something more than wages is here in issue.

The District Courts and Courts of Appeals have so understood *Westinghouse* and have interpreted Section 301 in accordance with these views.

United Electrical R & M Workers of America vs. General Electric Co., 231 F. 2d 259 (D. C. Cir., 1956), cert. den. 352 U. S. 872 (1956);

Local Lodge 2040, I. A. M. vs. Servel, Inc., 28 U. S. Law Week, p. 2006, 37 Labor Cases, p. 67,064 (7th Cir., June 24, 1959), — F. 2d —;

United Steelworkers of America vs. Pullman-Standard Car Mfg. Co., 241 F. 2d 547 (3rd Cir., 1957);

I. L. G. W. U. vs. Jay-Ann Company, Inc., 228 F. 2d 632 (5th Cir., 1956);

International Longshoremen's and Warehousemen's Union vs. Libby, McNeill and Libby, 221 F. 2d 225 (9th Cir., 1955);

Burlesque Artists Association vs. I. Hirst Enterprises Inc., 134 F. Supp. 203 (D. C. Pa., 1955).

II. THE DECISION BELOW IS NOT IN CONFLICT WITH DECISIONS OF THIS COURT.

(i) Lincoln Mills is not applicable.

In *Textile Workers Union of America vs. Lincoln Mills of Alabama*, 353 U. S. 448 (1957) this Court approved the acceptance of jurisdiction in cases for the violation of rights and obligations of the union as an organization. In that case the collective bargaining agreement provided for arbitration as the last step in the grievance procedure. The union, on the company's refusal, sued to compel arbitration. In the opinion written by Mr. Justice Douglas it was said (pp. 452-456):

> "The legislative history of § 301 is somewhat cloudy and confusing. But there are a few shafts of light that illuminate our problem.
>
> The bills, as they passed the House and the Senate, contained provisions which would have made the failure to abide by an agreement to arbitrate an unfair labor practice. * * * This feature of the law was dropped in Conference. As the Conference Report

stated, 'Once parties have made a collective bargaining contract the enforcement of that contract should be left to the usual processes of the law and not the National Labor Relations Board.' * * *.

Both the Senate and the House took pains to provide for 'the usual processes of the law' by provisions which were the substantial equivalent of § 301 (a) in its present form * * *.

Congress was also interested in promoting collective bargaining that ended with agreements not to strike. * * *.

Plainly the agreement to arbitrate grievance disputes is the *quid pro quo* for an agreement not to strike. Viewed in this light, the legislation does more than confer jurisdiction in the federal courts over labor organizations. It expresses a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained only in that way. * * *.

It seems, therefore, clear to us that Congress adopted a policy which placed sanctions behind agreements to arbitrate grievance disputes, by implication rejecting the common-law rule, * * * against enforcement of executory agreements to arbitrate."

There is no inconsistency between *Westinghouse* and *Lincoln Mills*. In *Westinghouse* the Court decided that jurisdiction does not exist where the right to be enforced is a uniquely personal right of the employee. In *Lincoln Mills* it decided that jurisdiction exists where the union sues for the violation of an obligation running to it—a union controversy. That the two cases do not conflict is shown by the distinction made by this Court in footnote 6 at page 456 of the *Lincoln Mills* opinion:

"*Assn. of Westinghouse-Employees vs. Westinghouse Electric Corp.*, 348 U. S. 437, is quite a differ-

ent case. There the union sued to recover unpaid wages on behalf of some 4,000 employees. The basic question concerned the standing of the union to sue and recover on those individual employment contracts. The question here concerns the right of the union to enforce the agreement to arbitrate which it has made with the employer."

Likewise, the concurring opinion of Mr. Justice Burton, with whom Mr. Justice Harlan joined, stated (p. 460):

"The District Court had jurisdiction over the action since it involved an obligation running to a union —a union controversy—and not uniquely personal rights of employees sought to be enforced by a union. Cf. Assn. of Westinghouse Employees v. Westinghouse Electric Corp., 348 U. S. 437."

Westinghouse held that uniquely personal rights of the individuals were enforceable by them in state courts and that Congress could not be presumed to have intended to add unnecessary congestion to the Federal docket.[1] *Lincoln Mills* cites specific congressional concern with the enforceability of agreements to arbitrate. This congressional concern was one of the chief motivations behind Section 301.

In no case decided since *Lincoln Mills* has jurisdiction been taken under Section 301 other than where the union sought to enforce its right to demand arbitration or to enforce an award resulting from arbitration.

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[1] In Ohio, the Union is permitted to sue in the Ohio courts as the representative of the employees.

Section 1745.01 of the Revised Code of Ohio states:

"Any unincorporated association may contract or sue on behalf of those who are members and, in its own behalf, be sued as an entity under the name by which it is commonly known and called."

(ii) The Union has neither alleged nor proven violation of any right of the Union as an entity.

The contractual rights which are owned by a union as such are entirely different in nature from the contractual rights owned by the individual employees. They are not received in exchange for labor performed. They are rights which have been agreed on to mark out the areas in which the union functions as a labor representative and the manner in which it is entitled to function. Examples are union recognition, administration and arbitration of grievances, union security and check-off of dues. These rights arise from promises made to the union for its own benefit as an entity and not from promises made through the union for the exclusive benefit of employees.

The Union does not seek in this case to enforce a provision for arbitration, union recognition, payroll deduction of dues, union leaves of absence or any other rights peculiar to the Union as a labor organization.

(iii) The Union's arguments, that rights of the Union, as such, are involved and that Westinghouse does not apply, are invalid.

The Union argues, at pages 15 and 19 of the Petition, that the suit is for the benefit of the Union because the Union is indirectly affected as a union. This is said to be so because, if the employees do not receive the wage and working conditions treatment provided for in the alleged contract, the Union is thus deprived of the right to administer a contract containing those provisions. This argument is without merit. If it were valid, *Westinghouse* would have ruled jurisdiction to exist. All violations of employees' uniquely personal rights would be deemed indirectly to affect the Union and the rule of *Westinghouse* would be meaningless.

The Union, at page 17 of the Petition, argues fallaciously that failure to abide by a contract which is admitted, such as in *Westinghouse*, differs from a failure to abide by a contract whose existence is denied, which is the instant case. The Union cites no authority in support of this argument.

Jurisdiction under Section 301 certainly does not turn on whether the alleged breach occurs before or after the parties voluntarily recognize the contract. Nor does it rest on whether the alleged breach is partial or complete.

The rights involved are the same in any case. They belong to the employees. This is true whether the employer says that they have not sprung into existence, violates them though they admittedly exist or disputes that they arise from a contract admittedly in existence.

The instant case where the recovery sought was an increase in wages after September 30, 1957 and specific performance of a claimed agreement as to compensation for sickness and as to scheduling and transfer procedures comes no closer or more critically to the heart of the "proper administration of the collective bargaining process * * *" (p. 21, Petition) than the *Westinghouse* case, where the recovery sought was wages not paid because of absence. The union is the collective bargaining representative of the employees in both cases. The "rules or chart of obligations by which the parties are to be guided" (p. 21, Petition) is involved in both cases. Both equally involve the "proper administration of the collective bargaining process." (p. 21, Petition.) If, as the Union contends, it has the right to come into a Federal Court and vindicate what it describes as its direct interests as the collective bargaining representative of all the employees (p. 21, Petition) it can be done only in disregard of *Westinghouse*.

The Union states at page 22 of the Petition that:

> "In the instant case, it is not any one individual's rights, or even a series of individual rights, that is involved. But rather the issue is as to the contract as a whole and whether the parties are obligated to carry out its terms in all respects."

This proves nothing. Although a contract is ordinarily a bundle of rights and obligations, nevertheless, to confer jurisdiction under Section 301 the suit must be for the violation of a collectively bargained contract with respect to contractual rights therein owned by a union as a labor organization. In the instant case, the Union seeks not merely a declaratory judgment as to the existence of a contract. It seeks performance of that contract and the promises contained therein. The former would have no meaning or purpose without the latter, and, as we have seen, there is no federal jurisdiction for a union to recover wages on behalf of its members or to enforce any other uniquely personal rights of its members.

The Union also makes the argument that jurisdiction exists over this suit because they have a right to have the issue determined according to federal rather than state law (pp. 11, 12, Petition). This argument is invalid. The same argument could have been made in *Westinghouse* yet this Court has apparently rejected it. The Union does not set forth why it is more important that federal law be applied to this dispute than to the dispute in *Westinghouse*. The question in both cases was whether the individual employees had certain contractual rights. Indeed, the Union's argument would lead to the inevitable result that all disputes involving collective bargaining agreements are proper subjects for suit under Section 301.

The argument that the suit was for the purpose of enforcing the Union's right to re-open the claimed con-

tract of September 30, 1957 (p. 18, Petition), is far-fetched and unrealistic. Any question as to when bargaining could again take place is moot. If, as the Union alleges, a contract for fifteen months was entered into on September 30, 1957, it expired seven months ago. Furthermore, the contract entered into on December 19, 1957 effective December 1, 1957 expired five months ago. The Union has had a right to bargain a new contract. It does not claim that it has not done so.

The Union also says (p. 19, Petition) that the dispute concerning the net credited service adjustments affects the Union's administration of grievances related thereto on behalf of the employees.

There is no dispute concerning the adjustments.

The alleged contract which the Union seeks to have enforced contains no mention of adjusting the net credited service. The Company is entitled to make the adjustments currently because of the Union's voluntary agreement on December 19, 1957 that they might be made pending final determination of the suit.

The December 19 agreement spells out the adjustments and the circumstances under which they are made. Grievances are unlikely. But, if the Union is required to administer grievances involving or created by the adjustment, as applied to any individual employee, it is because of a separate agreement with respect to the adjustment and not because of any issue in this litigation.

The Union, at page 18 of the Petition, objects to the use of that agreement as the basis for ousting the Federal Court of jurisdiction. That agreement could not create or oust jurisdiction. However, by entering into it, the Union and the Company indicated their understanding that the adjustment of net credited service was not an issue in the case and, but for an agreement, would remain unresolved

and be subject to further bargaining should the Company prevail in this case.

(iv) Court of Appeals and District Court cases cited by Union fail to support its position.

The Union cites and quotes from a number of Court of Appeals and District Court cases.

All of them fall into one or another of three categories. The categories are arbitration and arbitration award cases, cases decided before *Westinghouse* and cases which are not germane in any sense but are cited because of generalities about federal policy with respect to other statutory provisions and their enforcement.

These cases fail completely to support the Union, much less to represent an entrenched rule of law which conflicts with the judgment under review.

* * * * *

The case meets none of the tests which this Court customarily applies to determine whether certiorari will be granted. It has no extraordinary characteristics which suggest that this Court should review it.

Respondent submits that there is no reason to grant the petition and that it should be denied.

Respectfully submitted,

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